

## **Introduction**

This pamphlet is intended to provide the employee with some basic information about the illegal appointment review process in state service. Illegal appointments are made when the hiring of an individual does not comply with applicable civil service laws and regulations. Such appointments may result from administrative mistakes or misinformation, improperly clearing the employment list, or in rare cases, attempts to circumvent the state's civil service system.

## **Discovery of the Illegal Appointment**

When the state agency determines that the employee's appointment may possibly be an illegal appointment, the employee should not be sent home, returned to their former position or encouraged to relinquish their current position. The state agency must immediately notify the State Personnel Board (SPB) in writing, of the apparent illegal appointment. Normally, the employee will continue to work in the position and continue to receive compensation until the employee is officially notified by SPB that the appointment will end. The SPB has the sole authority to void an illegal appointment. The voiding of an illegal appointment occurs only after all the facts are gathered and the employee is provided with an opportunity to respond.

## **Investigation of Facts**

When notified of a possible illegal appointment, SPB conducts a review of the specific facts and relevant documents regarding the appointment, as

well as the applicable civil service laws, regulations, and policies. This information is reviewed to determine (1) the legality of the appointment and (2) whether the employee and/or state agency acted in good faith when the appointment was offered and/or accepted.

## **SPB's Preliminary Decision**

After reviewing the facts, SPB will send a preliminary letter of determination to the employee as well as their state agency outlining the basis of the decision. The state agency will be available to discuss the preliminary letter with the employee and respond to any questions the employee may have regarding the pending action. The employee and the state agency will have 15 calendar days to submit additional information to SPB before a final decision is made. When additional information is presented, SPB will review the information and re-evaluate the pending action prior to rendering a final decision.

## **SPB's Final Decision**

After the 15 calendar day response period has passed, SPB will send a final decision letter to the employee as well as their state agency. If SPB finds that the appointment is illegal, the appointment will be voided and SPB will include the ending date of the illegal appointment in the final letter. The state agency will be available to discuss the decision letter with the employee, respond to any questions, and inform the employee of their reinstatement eligibility. However, if the employee has no former state service that can be considered for reinstatement

purposes, the employee will be separated from state service.

If ending the illegal appointment will cause an extreme personal hardship on the employee, the employee should discuss this issue with their agency's Personnel Office.

Sometimes, it is found that the appointment in question is legal, and in those cases, SPB will send a letter outlining this determination to the employee and the state agency, and the employee continues working in the position.

## **Remedial Actions**

When the investigation of an illegal appointment shows that an employee accepted the appointment in good faith, SPB will discuss remedial measures with the state agency to mitigate the negative effects that the appointment termination may have on the employee, (e.g., place the employee's name back on the employment list, conduct a deferred examination).

## **Appeal Rights**

If the appointment is found to be illegal and will be voided, the employee and/or their state agency may appeal after receiving the final decision letter from SPB. Such appeals must be in writing, filed within 30 calendar days of receipt of the final decision to void the appointment, and addressed to the State Personnel Board, Appeals Division, P. O. Box 944201, Sacramento, CA 94244-2010.

## **Pay and Employee Benefits**

In some cases, an employee whose appointment has been voided received a salary and employee benefits that he/she was not eligible to receive because of the illegal nature of the appointment. These benefits may include vacation, sick leave, health benefits, retirement benefits, salary step advancement, service towards vacation accrual rates, etc. Government Code Section 19275 allows employees, who acted in good faith when accepting the appointment, to retain the earned salary and benefits. However, if it is determined that the employee did not act in good faith when accepting the illegal appointment, the State shall be reimbursed for the compensation received.

of state service because the employee will be reinstated to another appointment the day immediately following the termination of the illegal appointment.

## **Questions**

The Personnel Office of the state agency will assist the employee with any questions they may have regarding the appointment.



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## **Cancellation of Status Related Rights**

When SPB voids an illegal appointment, this action cancels the status related aspects of the appointment that the employee normally would gain; this includes tenure in the appointment class, seniority credits, permissive reinstatement rights, eligibility to take promotional examinations, career credits, permanent or probationary status, service toward completion of the probationary period and any other status rights or eligibility stemming from the illegal appointment.

## **Employment History**

Voided illegal appointments will appear on the employee's employment history as a separation transaction from state service. If the employee has former state service that can be considered for reinstatement purposes, termination of the illegal appointment will not break the continuity

## **Information About**

# ***The Illegal Appointment Review Process***